

HOUSE BILL 3103
By Bragg

AN ACT to clarify the right of all telecommunications service providers to obtain non-discriminatory access to customers and to amend Tennessee Code Annotated, Title 65, relative to the Tennessee Public Service Commission and its successor agency, the Tennessee Regulatory Agency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-21-103, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Any telecommunications service provider, as defined in Tennessee Code Annotated, Section 65-4-101, may construct, operate, and maintain telecommunications transmission facilities over, on, under or into any public or privately owned property as may be reasonably necessary to provide telecommunications service to customers.

(b) A local government shall have all reasonable police powers to regulate the construction, operation, and maintenance of telecommunications transmission facilities including the right to exact a franchise fee for the use of public rights-of-way provided the fee is reasonable and is imposed equally upon all telecommunications service providers without discrimination. No local government may prevent a telecommunications service provider from using a public right-of-way to construct, operate, or maintain telecommunications transmission facilities as long as the provider operates in accordance with such reasonable police regulations.

(c) No property owner may prevent a telecommunications service provider from constructing, operating, or maintaining telecommunications transmission facilities into or

across the owner's property in order to provide telecommunication service to customers. A property owner is entitled to collect a reasonable fee from a telecommunications service provider for constructing, operating, or maintaining telecommunications transmission facilities into or across the owner's property provided the fee is no greater than necessary to compensate the owner for actual expenses and loss of value, if any, resulting directly from the use of the owner's property and provided the fee is imposed equally on all telecommunications service providers without discrimination.

(d) No publicly owned or privately owned utility, including utility districts, cooperatives, municipally owned utilities, and telecommunications service providers, may deny a telecommunications service provider access, upon reasonable, non-discriminatory terms and conditions, to rights-of-way, poles, or conduits for the construction, operation, or maintenance of telecommunications transmission facilities. Such utility may collect a reasonable fee from a telecommunications service provider for the use of the utility's right-of-way, poles, or conduits. Such fee shall be no greater than necessary to compensate the utility from actual expenses and loss of value, if any, resulting directly from the use of the utility's property and such fee shall be imposed equally on all telecommunications service providers without discrimination.

(e) Notwithstanding the provisions of any franchise, contract, or other agreement, no telecommunications service provider shall be required to pay to any local government or publicly owned utility a franchise fee, pole attachment fee, or conduit fee unless the fee is imposed equally on all telecommunications service providers without discrimination.

(f) If transmission facilities are used jointly for the provision of telecommunications services and other services, including cable television service, those transmission facilities shall be classified as telecommunications transmission facilities for purposes of this act.

(g) Upon the petition of a telecommunications service provider, the Tennessee Public Service Commission shall have jurisdiction to enforce the provisions of this part.

SECTION 2. Tennessee Code Annotated, Section 65-21-201, is amended by deleting the section in its entirety.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

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